

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
Honolulu, Hawaii

August 12, 2011

Board of Land and
Natural Resources
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR AUTHORIZATION TO ENTER INTO A PRODUCTION AGREEMENT WITH PSG MOTION PICTURES, LLC TO ALLOW PSG MOTION PICTURES, LLC TO RIDE ALONG WITH AND FILM DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT (DOCARE) OFFICERS AND ALLOW THE FOOTAGE TO BE USED IN A DOCUMENTARY-STYLE SERIES

BACKGROUND

PSG Motion Pictures, LLC, is a Washington based, limited liability company that produces documentary programming, which includes National Geographic's Alaska State Troopers, Frontier Force, and Cowboys of the Sea. PSG documentaries are aired on cable networks domestically and throughout the world with audiences in Australia, Poland, United Kingdom, Canada and Sweden.

The PSG production team has a combined experience of over 40 years in television and includes a select group of producers, photographers, writers and editors.

PSG is proposing to produce a documentary series, consisting of six hour-long episodes to be aired on the National Geographic Channel. The production will consist of PSG Films crews riding along with DOCARE officers documenting the day-to-day activities of their jobs. PSG estimates that for this type of programming, it will take about three weeks to film enough footage for one episode. PSG's requested filming period with DOCARE is approximately seven months; however PSG will not be filming DOCARE continuously for this entire period. PSG intends to send out film crews for two to three week shifts, with down time in between each shift. Some shift time will be spent capturing scenic and other footage which does not involve DOCARE personnel. Film crews will be a maximum of two people, one cameraperson and one producer, and, at any given film shoot, there will be a maximum of two crews.

DISCUSSION

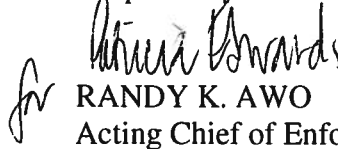
The production agreement allows PSG to ride along with and film DOCARE officers performing their official duties, and allows PSG to use the footage for a documentary-style series. Specifically, the production agreement provides that:

1. The producer is requesting permission from the Board for its crew to ride in vehicles and/or boats owned and/or operated by DOCARE and/or helicopter service procured by the Board to photograph, film or videotape DOCARE enforcement activities and to use the film or video footage for a documentary-style series that follows DOCARE enforcement officers performing official enforcement functions.
2. The term of the agreement is for the period commencing from the date the agreement is signed through June 30, 2012.
3. PSG will obtain a film permit from the Hawaii State Film Office prior to any filming or videotaping on State property.
4. PSG crew members shall sign waiver and release forms prior to any ride along.
5. DOCARE may review any and all materials and segments for factual accuracy before airing.
6. The scheduling of videotaping of DOCARE locations is subject to DOCARE approval.
7. The agreement shall be interpreted, enforced and governed under the laws of the State of Hawaii.


RECOMMENDATION:

That the Board authorizes the Chairperson to execute the Production Agreement to allow PSG to film and ride along with DOCARE officers and allow the footage to be used in a documentary-style series, subject to: (1) the terms and conditions set forth herein, (2) such other terms and conditions as may be prescribed by the Chairperson, and (3) review and approval of the Department of the Attorney General.

Respectfully submitted,


for RANDY K. AWO
Acting Chief of Enforcement

APPROVED FOR SUBMITTAL:


WILLIAM J. AILA, JR., Chairperson
Board of Land & Natural Resources

Production Agreement

THIS AGREEMENT, made this ____ day of _____, 2011 by and between PSG Motion Pictures, LLC, a Washington corporation, whose business address is 118 North 36th, Seattle, Washington 98103, hereinafter called "Producer," and the State of Hawaii Board of Land and Natural Resources, whose principal place of business and business address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called "Board."

WITNESSETH, THAT

WHEREAS, Producer is planning to film a documentary-style series that follows the State of Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement ("DOCARE") enforcement officers performing their official duties; and

WHEREAS, Producer requested permission from the Board for its crew to ride in vehicles and/or boats owned and/or operated by DOCARE and/or helicopter service procured by the Board, and videotape DOCARE enforcement activities; and

WHEREAS, the Board has reviewed Producer's request and wishes to allow Producer's crew to ride in vehicles and/or boats owned and/or operated by DOCARE and/or helicopter service procured by the Board, and videotape DOCARE enforcement activities; and

WHEREAS, the Board has the authority to bind itself and DOCARE to the terms of this Agreement;

NOW THEREFORE, in consideration of the premises and mutual covenants of the parties, IT IS HEREBY AGREED AS FOLLOWS:

1. The Board grants to Producer and its representatives, parents, subsidiaries and affiliates, licensees, successors, and assigns, for good and valuable consideration, receipt of which is hereby acknowledged, permission to ride in vehicles and/or boats owned and/or operated by DOCARE and/or helicopter service procured by the Board, and photograph, film, and/or videotape and otherwise record (visual and sound) the day-to-day activities of DOCARE enforcement officers performing their official duties, and use the film or video footage thereof for a documentary-style series that follows DOCARE enforcement officers performing official enforcement functions ("Program"), and in connection with publicity and/or promotion therefor. All physical embodiments of videotaping, filming, recording (visuals and sounds), and photography shall hereinafter be known as the "Materials."
2. The term of this Agreement shall be for the period commencing from the date of this Agreement through June 30, 2012. This Agreement may be terminated at any time, by notice from the Chairperson of the Board and in the Chairperson's sole discretion, with or without cause, upon the Chairperson giving ninety (90) calendar days advance written notice to the Producer.

3. Producer shall obtain a film permit from the Hawaii State Film Office prior to any filming or videotaping on State property.
4. Producer agrees to use reasonable care to prevent damage to State land and personal property.
5. Producer shall defend and indemnify the State of Hawaii, its officers, employees, agents, and assigns, and hold each of them harmless from any claims and demands from any person(s) arising out of or based on any personal injury, death, or property damage arising directly or indirectly from Producer's use or presence on State property or participation as a ride along. This provision shall survive the termination of this Agreement.
6. Producer, its parents, subsidiaries and affiliates, successors, and assigns remise, release, and forever discharge the State of Hawaii, and its officers, employees, agents, and assigns, acting in their official capacities with due diligence, from any and all claim(s), demand(s), or cause(s) of action on account of the death or injury to its officer(s) or employee(s), of the property of its officer(s) or employee(s), which may occur on State property or during a ride along. This provision shall survive the termination of this Agreement.
7. Producer, its parents, subsidiaries and affiliates, licensees, successors, and assigns assume all risk of bodily injury, wrongful death, and/or property damage that may occur on State property or during a ride along and hereby waive any and all claims against the State of Hawaii, its officers, employees, agents, and assigns.
8. Producer shall procure, at Producer's own cost and expense, and maintain during the entire period of this Agreement, comprehensive general liability insurance, issued by an insurance company or companies licensed or authorized to do business in the State of Hawaii, with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$5,000,000 for each occurrence and \$10,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii Department of Land and Natural Resources (DLNR). The insurance shall cover any and all ride alongs, use of State property, and any other activity described in this Agreement.

Prior to or upon execution of this Agreement, Producer shall furnish DLNR with a certificate(s) of insurance showing the insurance policy or policies. If the scheduled expiration date of the current insurance policy is sooner than the specified termination date of this Agreement, the Producer shall, upon renewal of the insurance policy or policies, provide DLNR with a copy of the renewed insurance policy certificate(s). This insurance shall not be cancelled, limited in scope or coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to DLNR. DLNR may, at any time, require the Producer to provide DLNR with copies of the insurance policy or policies that are or were in effect during this Agreement.

The Chairperson of the Board shall retain the right at any time to review the coverage, form, and amount of insurance required by this Agreement. If, in the opinion of the Chairperson of the Board, the insurance provisions in this Agreement do not provide adequate protection for the State of Hawaii, the Chairperson may require Producer to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Chairperson's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Chairperson shall notify Producer in writing of changes in the insurance requirements and Producer shall deposit copies of acceptable insurance policy or policies and certificate(s) thereof, with the Producer incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy or policies of insurance shall not be construed to limit the Producer's liability under this Agreement nor to relieve or release the Producer of the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, Producer shall be obligated for the full and total amount of any damage, personal injury, wrongful death, or loss arising out of, or in connection with, any ride along, filming, or other activity described in this Agreement.

9. While filming and riding along with DOCARE, Producer, its officers and employees, shall follow all lawful directions and directives of DOCARE.
10. Producer's crew members shall sign waiver and release forms in a form prescribed by DOCARE prior to any ride along. Producer acknowledges that any crew member who does not sign a waiver and release form will not be allowed to participate as a ride along.
11. The Board grants Producer all rights of every kind in and to the Materials, including, the right to exploit the Materials throughout the world, an unlimited number of times, in perpetuity in any and all media, now known or hereafter invented, in connection with the Program, and advertising and promotional purposes in connection therewith, and all rights, including copyright in the Materials shall be and remain vested in Producer. As between the Board, DOCARE, and Producer, Producer shall be the sole owner of the Materials and the Program under United States intellectual property law (including, but not limited to, trademark and copyright law).
12. DOCARE may review any and all Materials and segments containing footage from Materials before airing, for factual accuracy. DOCARE will inform Producer in writing of its approval, disapproval, or required cuts or modifications within five (5) business days of its receipt of the photographs, video, or film. Producer shall make any and all changes required by DOCARE under this Section 12 prior to any release of Materials, segments, or footage.
13. The scheduling of videotaping of DOCARE locations by Producer's crew is subject to DOCARE approval. DOCARE has the right to terminate filming if, in DOCARE's determination, filming compromises any investigation or enforcement activity. The activities

of Producer's crew on DOCARE locations shall be subject to and under the control of DOCARE.

14. Materials and any show or segment featuring Materials shall not portray DOCARE in a derogatory or negative manner.
15. The undersigned acknowledge that Producer is videotaping, photographing and recording such scenes in express reliance upon the foregoing. The undersigned represent and warrant that they are duly authorized to enter into this Agreement.
16. Producer is not obligated to actually use the Materials or produce the Program for which it was shot or otherwise. Producer may at any time elect not to use the Materials.
17. This Agreement shall be interpreted, enforced, and governed under the laws of the State of Hawaii.
18. This Agreement contains the entire agreement between the parties and any executory agreement hereinafter made shall be ineffective to change, modify, discharge, or effect an abandonment of it in whole or in part unless such executory agreement is in writing and signed by both parties.

STATE OF HAWAII BOARD OF LAND
AND NATURAL RESOURCES

By _____
William J. Aila, Jr.
Its Chairperson

PSG MOTION PICTURES, LLC

By _____
Printed Name: _____
Its _____
(Title)

APPROVED AS TO FORM:

Cindy Y. Young
Deputy Attorney General

STATE OF HAWAII

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COUNTY OF

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On this _____ day of _____, 20____,
before me appeared _____
and _____,
to me personally known, who, being by me duly sworn, did say
that they are the _____ and _____,
respectively of _____, a
Hawaii corporation, and that said instrument was signed on
behalf of said corporation by authority of its Board of
Directors, and the said _____ and
acknowledged said instrument to be the free act and deed of said
corporation.

Print Name: _____

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII

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) SS.

COUNTY OF

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On this _____ day of _____, 20____,

before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: _____

Notary Public, State of Hawaii

My commission expires: _____